

S/N 09/506,603  
Docket: YO999-374

### **REMARKS**

Entry of this Amendment is proper under 37 CFR §1.116, since no new claims or issues are raised and the claim amendments merely address the indefiniteness issues recently identified by the Examiner.

It is noted that the claim amendments herein are intended solely to more particularly point out the present invention for the Examiner, and not for distinguishing over the prior art or the statutory requirements directed to patentability.

It is further noted that, notwithstanding any claim amendments made herein, Applicant's intent is to encompass equivalents of all claim elements, even if amended herein or later during prosecution.

Claims 1-6 and 8-26 are all of the claims pending in the present Application. Claims 7 and 27 have been cancelled above. Claims 1, 5, 6, 8, and 26 stand as being objected to and rejected under 35 USC §112, second paragraph, as being indefinite for insufficient antecedent bases. Applicants believe the above claim amendments address these concerns and respectfully request that the Examiner reconsider and withdraw this objection and rejection.

Claims 1, 5, 6, 8, and 26 stand as allowable if rewritten to overcome the indefiniteness issues. Applicants believe these claims are now in condition for allowance.

Claims 9-21, 23, and 24 stand rejected under 35 USC §103(a) as unpatentable over US Patent 6,006,264 to Colby et al., further in view of US Patent 6,341,309 to Vaid et al.

This rejection is respectfully traversed in view of the following discussion.

### **I. THE CLAIMED INVENTION**

As described and claimed, for example by claim 9, the present invention is directed to a communications system including a worldwide network for communicating with a plurality of customers. A worldwide network communicates with a plurality of customers. A manager, operatively coupled to the worldwide network, controls and guarantees a service level agreement (SLA) for at least one said customer based on monitoring a communications outbound link bandwidth usage by each said customer.

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At least one server functions as a server farm, operatively coupled to the manager. The plurality of customers has electronic business activity hosted by the at least one server as the server farm.

The outbound link bandwidth usage is controlled by controlling a flow of incoming requests for the electronic business activity, as long as the service level agreement is maintained as agreed.

The prior art currently of record fails to maintain SLAs by monitoring outbound link bandwidth usage as a parameter to thereby control customer input requests. The technique of the present invention allows outbound capacity to be fully utilized, while maintaining the guaranteed SLAs.

Moreover, the present invention allows revenues to be optimized by recognizing that the customers whose requests are selectively queued and/or dropped can be the lower-rate customers. That is, higher-rate customers' traffic can be relatively increased at the expense of the lower-rate customers' traffic, as long as SLAs are maintained for all customers, including the SLAs for the lower-rate customers.

The present invention also allows for the situation where the service level potentially is not guaranteed above zero (e.g., for customers not wanting to have any guaranteed bandwidth if they can save money by only getting bandwidth that is left over after the higher-paying customers have their guarantees met).

## II. THE PRIOR ART REJECTION

The Examiner alleges that US Patent 6,006,264 to Colby et al., further in view of US Patent 6,341,309 to Vaid et al., renders as obvious the present invention as defined by claims 9-21, 23, and 24.

The Examiner alleges that Colby teaches all aspects of the present invention defined by these rejected claims except that the SLA is not based on the outbound link bandwidth usage by the customers. To overcome this conceded deficiency, the Examiner relies on Vaid.

Applicants previously explained how Colby/Vaid could not reasonably be combined, and would not result in the present invention even if combined. However, in a good faith

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effort to expedite prosecution, Applicants have amended claim 9 to further clarify the present invention, for the benefit of the Examiner, by incorporating wording from claim language that the Examiner considers as an allowable feature.

Hence, turning to the clear language of claim 9, there is no teaching or suggestion of “... based on monitoring a communications outbound link bandwidth usage by each said customer ... wherein said outbound link bandwidth usage is controlled by controlling a flow of incoming requests for said electronic business activity, as long as said service level agreement is maintained as agreed.”

For the reasons stated above, the claimed invention is fully patentable over the cited references.

Further, the other prior art of record has been reviewed, but it too, even in combination with Colby and Vaid, fails to teach or suggest the claimed invention.

### III. FORMAL MATTERS AND CONCLUSION

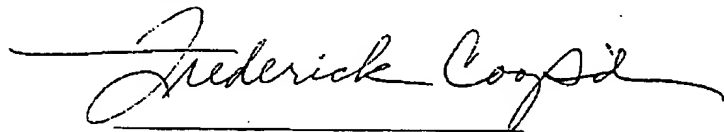
In view of the foregoing, Applicant submits that claims 1-6 and 8-26, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Assignee's Deposit Account No. 50-0510.

Respectfully Submitted,

Date: 6/14/04



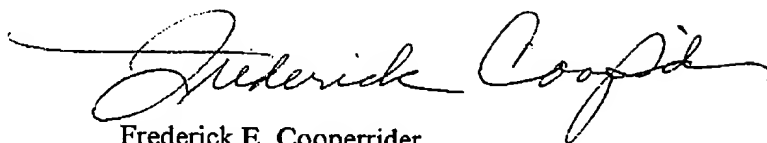
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CERTIFICATION OF TRANSMISSION

I certify that I transmitted via facsimile to (703) 872-9306 this Amendment under 37 CFR §1.116 to Examiner Jason Cardone on June 14, 2004.



Frederick E. Cooperrider  
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